

Ireland and the Convention on the Elimination of All Forms of Racial Discrimination

Irish Human Rights and Equality Commission

March 2022



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

Ireland and the Convention on the Elimination of All Forms of Racial Discrimination

Submission to the United Nations Committee on the Elimination of Racial Discrimination on the follow-up procedure to Ireland's combined 5th to 9th periodic reports

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Introduction

The Irish Human Rights and Equality Commission ('the Commission') is Ireland's 'A' Status National Human Rights Institution and the National Equality Body. The Commission previously made a submission to the UN Committee on the Elimination of Racial Discrimination ('the Committee') in October 2019, in respect of Ireland's combined fifth to ninth periodic reports under the Convention on the Elimination of All Forms of Racial Discrimination ('CERD').¹ In its 2019 Concluding Observations, the Committee requested that the Government of Ireland provide updates within one year on the steps taken to implement recommendations in the following areas:

1. Racist hate speech (para 20(b) and (c))
2. Racist hate crime (para 22(a) and (e))
3. Legal aid (para 44)²

The Commission notes the late submission by the State of its follow-up report³ to the Committee in February 2022.

The Commission welcomes a number of developments since Ireland's examination by the Committee in December 2019, including the establishment of the Anti-Racism Committee ('ARC') in June 2020. The ARC's Terms of Reference require it to produce an Interim Report to Government within three months of convening, and to provide a draft National Action Plan Against Racism ('NAPAR') to Government within one year.⁴ The ARC submitted its

¹ IHREC [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019).

² For the full text of the recommendations for follow-up, see: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fIRL%2fCO%2f5-9&Lang=en

³ [UN Treaty Body Database](#)

⁴ The ARC been mandated to review current evidence and practice and make recommendations to Government on how best to strengthen its approach to tackling racism, including drawing up a new NAPAR. See Department of Justice, [Action Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee](#) (2020). The Commission published detailed recommendations to the ARC in 2021, including that the NAPAR is underpinned by international human rights and equality principles and standards: IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021).

Interim Report to Government in November 2020,⁵ however the Commission notes that the report was not published until April 2021. Moreover, the provisional timeline for the draft NAPAR was pushed back to the end of 2021,⁶ and is now scheduled for publication in 2022.⁷ In light of the State's growing pattern of delays in meeting its target deadlines, the Commission calls for greater urgency and prioritisation of the State's commitments to eliminating racism and racial discrimination in Ireland.

The Commission notes that the development of the NAPAR in Ireland is part of a wider effort of combatting racism at the European level, notably the European Commission's *EU Anti-Racism Action Plan 2020-2025*.⁸ The Commission also notes that the EU Equality Data Subgroup⁹ recently published its 'Guidance Note on the Collection of Data Based on Racial or Ethnic Origin' for the *EU Anti-Racism Action Plan 2020-2025*.¹⁰ The Commission is concerned about the apparent confusion or reluctance among many public bodies in Ireland – including the police - in relation to the collection and processing of 'special category' data such as race, ethnicity and religion data.¹¹ There is a need a coordinated and systematic approach to equality data collection.¹² There is a requirement under the Public Sector Equality and Human Rights Duty¹³ to assess and report on progress in relation to human

⁵ See Anti Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#) (2020).

⁶ See Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman publishes Interim Report of Independent Anti-Racism Committee and welcomes the launch of the Committee's Public Consultation](#) (2021).

⁷ Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 para 24.

⁸ The EU Anti-Racism Action Plan encourages all Member States to develop and adopt national action plans against racism and racial discrimination. See European Commission, 18 September 2020, [EU Anti-Racism Action Plan](#).

⁹ IHREC is represented on this group. The EU Equality Data Subgroup – which is chaired by the Fundamental Rights Agency - is a satellite group of the EU High Level Group ('HLG') on Non-Discrimination, Equality and Diversity. It was mandated to prepare the Guidance Note to feed into the EU Anti-Racism Action Plan 2020-2025.

¹⁰ The EU Equality Data Subgroup strongly advocates for the urgent need for disaggregated data by ethnic or racial origin across European member states to track progress in achieving goals set in EU and global commitments. The Guidance Note seeks to promote reliable and comparable data at national and a European level: European Commission High Level Group on Non-Discrimination, Equality and Diversity – Subgroup on Equality Data, [Guidelines on improving the collection and use of equality data](#) (2018).

¹¹ See Article 9(1), European Union (EU) General Data Protection Regulation 2016/679.

¹² See IHREC(2021) [Developing a National Action Plan Against Racism. Submission to the Anti-Racism Committee](#) pp13-17.

¹³ Under section 42 of the *Irish Human Rights and Equality Commission Act 2014*.

rights and equality goals. The Commission is of the view that the collection of special categories of personal data can be done lawfully within current European and Irish data protection legislation.¹⁴

The Commission guidance in relation to the Public Sector Equality and Human Rights Duty and data states:

“While identifying an appropriate legal basis under Article 6 and a permissible condition under Article 9 of the General Data Protection Regulation (GDPR) for processing personal data and special categories of personal data, is a matter for each public body as a data controller, the Commission is of the view that a legal basis and permissible condition does exist in both GDPR and the Data Protection Act, 2018, to allow public bodies to process personal data and special categories of personal data which may constitute equality data. Public bodies are reminded that the Public Sector Equality and Human Rights Duty is a statutory obligation placed on them.”¹⁵

Despite the Committee’s continued recommendations, the Commission regrets that Ireland has yet to remove its reservation/interpretative declaration to Article 4 CERD.¹⁶ The Commission has recommended that the State immediately develop and publish a roadmap and timeline for the removal of its reservation/interpretative declaration to Article 4 CERD through priority legislation.¹⁷

The below sections of this submission provide the Committee with specific updates and information of relevance to the recommendations identified for follow-up, and to assist the Committee in its analysis of the State’s follow-up report.

¹⁴ The 2018 EU Equality Data Guidelines emphasise the legal basis for the collection of equality data, including special category data. See European Commission High Level Group on Non-Discrimination, Equality and Diversity – Subgroup on Equality Data, [Guidelines on improving the collection and use of equality data](#) (2018).

¹⁵ [Public Sector Duty/FAQs on the Duty](#)

¹⁶ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#) (December 2019) para 10.

¹⁷ Removal of the interpretative/declarative reservation to Article 4 CERD emerged as one of the priority recommendations within the ARC Interim Report. See Anti Racism Committee, [Interim Report to the Minister for Children, Equality, Disability, Integration and Youth](#) (2020) 14.

Racist hate speech

In its Concluding Observations, the Committee recommended that Ireland:

“intensify its efforts to tackle the prevalence of racist hate speech on the Internet and social media, in close cooperation with the Internet service providers and social media platforms.”¹⁸

The Committee additionally recommended that Ireland:

“ensure that the Online Safety and Media Regulation Bill, which is under development, is in line with international human rights standards and expeditiously enacted.”¹⁹

Hate speech on the Internet and social media

Since its report to the Committee in 2019, the Commission welcomes proposed reform of the legislative framework for combatting hate speech both online and offline in Ireland, including the publication of the General Scheme of the *Criminal Justice (Hate Crime) Bill* in 2021,²⁰ and the publication of the *Online Safety and Media Regulation Bill* in 2022.²¹ Careful alignment between both legislative proposals is essential for ensuring a complementary framework for combatting harmful online content.

Until both legislative proposals are enacted, notice-and-takedown procedures for Internet service providers and social media platforms continue to serve as the primary mechanisms of regulation for online hate speech. The Commission continues to have concerns over the

¹⁸ See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#) (December 2019) at para 20(b).

¹⁹ See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#) (December 2019) at para 20(c).

²⁰ The General Scheme was published on 16 April 2021; see [General Scheme of the Criminal Justice \(Hate Crime\) Bill](#). The Commission made a submission on the Bill in February 2022.

²¹ The Bill was published on 14 January 2022; see the [Online Safety and Media Regulation Bill](#). The Commission made a submission on the General Scheme of the Bill in March 2021; see IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (March 2021).

efficacy and consistent application of such procedures, as noted in its submission to the Committee in 2019.²²

The Commission recommends that the proposed legislation relating to racist hate speech on the internet and social media is progressed and implemented in line with the State's human rights obligations, including under CERD.

Online Safety and Media Regulation Bill

The *Online Safety and Media Regulation Bill*, published in January 2022, aims to establish a regulatory framework to deal with the spread of harmful online content,²³ and will transpose the revised *Audiovisual Media Services Directive* into Irish law.²⁴ The Bill provides for the establishment of a Media Commission to oversee the new regulatory framework for online safety.²⁵ It is intended that the Media Commission will govern this new framework through binding online safety codes and robust compliance, enforcement and sanction powers,²⁶ as previously recommended by the Commission.²⁷ The Bill also provides for the imposition of financial sanctions in cases of non-compliance.²⁸ There is a commitment to establish an Online Safety Commissioner as part of the new Media Commission,²⁹ but this is not specifically provided for in the Bill itself.

²² IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019) 48.

²³ [Online Safety and Media Regulation Bill 2022](#).

²⁴ 'Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities'. Member States were expected to implement the AVMS Directive 2018/1808 in national law by 19 September 2020, a deadline which Ireland has regrettably missed.

²⁵ See *Online Safety and Media Regulation Bill 2022* Explanatory and Financial Memorandum.

²⁶ See *Online Safety and Media Regulation Bill 2022*, Part 3.

²⁷ Recommendations from the Commission include the development of a comprehensive regulatory framework to combat prejudicial and discriminatory content and hate speech online, and that compliance with the framework should be overseen and enforced by an independent statutory body and should be promoted by way of effective and proportionate sanctions. See IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019) 49.

²⁸ See *Online Safety and Media Regulation Bill 2022*, Part 12.

²⁹ Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, [Publication of the Online Safety and Media Regulation Bill](#) (2022).

The Commission has made several recommendations to the Irish parliament's pre-legislative scrutiny of the *Online Safety and Media Regulation Bill*,³⁰ including that the definition of harmful online content, as outlined in the Bill, specifically refer to online hate speech and content inciting violence or hatred against protected groups,³¹ including for example – on the grounds of gender, nationality, race and ethnic background and disability.³² The Commission also notes that the category of harmful online content should clearly account for the development of the proposals on incitement to hatred under the *Criminal Justice (Hate Crime) Bill* to ensure legal certainty.

The Commission is of the view that the work of the Media Commission, and the Online Safety Commissioner, should be grounded in, and comply with, the State's human rights and equality obligations, including the Public Sector Equality and Human Rights Duty.³³ This is particularly important given the Media Commission's role in developing regulatory tools and processes, including codes of practice, conducting investigations, and its power to convey licenses to broadcasters and operate registration systems for on-demand audio-visual services. Equally, it would inform how the Media Commission approaches and prioritises public awareness strategies and educational initiatives,³⁴ which should include measures to increase public understanding of the national prevalence and impact of racism and hate speech.³⁵ The Media Commission's membership should also be representative of Irish society.³⁶ Adequate budgetary and staff resources must be allocated to the Media

³⁰ For further commentary from the pre-legislative scrutiny of the Bill see, Joint Committee on Tourism, Culture, Arts, Sport and Media, [Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill](#) (2021).

³¹ CERD expressly prohibits incitement to hatred on the grounds of racial, national, religious and ethnic origin. Article 21 of the Charter of Fundamental Rights of the European Union places an obligation on the State to ensure any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

³² See IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) 23-26.

³³ IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) 17-18, 22-23.

³⁴ See *Online Safety and Media Regulation Bill 2022*, Part 3, Section 7(3)(f).

³⁵ IHREC, [Strategy Statement 2022–2024](#) (2022) 15.

³⁶ IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) 21-22. The Commission notes that the Media Commission is required to endeavour to ensure diversity and transparency in the control of communications media operating in the State: *Online Safety and Media Regulation Bill 2022*, Part 3, Section 7(3)(b).

Commission to ensure it has the requisite capacity to perform its statutory duties and functions. Resourcing is particularly relevant given recent European Court of Justice opinions on the Irish Data Protection Commission, as well as the fact that Ireland is European host to many multinational social media and technology companies.³⁷

The Commission is concerned that its detailed recommendations on the proposed *Online Safety and Media Regulation Bill* have not been addressed in the development of the legislation, and is of the view that the outstanding issues must be addressed to strengthen the legislative framework and bring it into line with international human rights standards.

The Commission recommends that:

- **the definition of harmful online content in the proposed legislation must be clear and sufficiently precise, and include online hate speech and content inciting violence or hatred against protected groups;**
- **terms relating to hate speech, such as racism, should be clearly defined;**
- **the legislation should include a specific statutory requirement that the Media Commission, in the performance of its functions, has due regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights;**
- **the membership of the Media Commission should reflect the nature and diversity of Irish society;**

³⁷ The Irish Data Protection Commission has been criticised by the European Court of Justice ('ECJ') and by the European Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE) for continued failures in enforcing GDPR in Ireland. In a 2021 ECJ opinion these failures were characterised as 'persistent administrative inertia' in which the LSA [Lead Supervisory Authority] - for lack of expertise and/or staff, or for whatever other reason – fails to take any meaningful action in order to investigate possible breaches of the GDPR and, where appropriate, enforce its rules.' See European Parliament Committee on Civil Liberties, Justice and Home Affairs, [Draft Motion for a Resolution](#) 2020/2789(RSP) and Opinion of Advocate General Bobek (13 January 2021), Case C-645/19 Facebook Ireland Limited, Facebook Inc., Facebook Belgium BVBA v Gegevensbeschermingsautoriteit.

See also a recent ruling by the European Court of Justice that under certain conditions, a national supervisory authority may exercise its power to bring any alleged infringement of the GDPR before a court of a member state, even though that authority is not the lead supervisory authority with regard to that processing. See Court of Justice of the European Union (15 June 2021) Judgment in Case C-645/19 Facebook Ireland and Others.

- the legislation should make specific provision for the role and functions of the Online Safety Commissioner,³⁸ including a requirement to have due regard to human rights standards; and
- adequate budgetary and staff resources should be allocated to the Media Commission to ensure its ability to effectively carry out its functions and enforcement powers, particularly to tackle the prevalence of online hate speech.³⁹

³⁸ A Parliamentary Committee has also recommended that the Bill is amended to include the position of the Online Safety Commissioner, and the relevant roles and responsibilities: Joint Committee on Tourism, Culture, Arts, Sport and Media, [Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) 37.

³⁹ A Parliamentary Committee has also recommended that the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement Joint Committee on Tourism, Culture, Arts, Sport and Media, [Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) 37.

Racist hate crime

Hate crime in Ireland: legislative framework

On 16 April 2021, the *General Scheme of the Criminal Justice (Hate Crime) Bill 2021*⁴⁰ was published. The Bill proposes to repeal the current law on incitement to hatred and introduce new offences. The Bill also proposes to create new, aggravated forms of certain existing criminal offences, where those offences are motivated by prejudice against a protected characteristic.

The Commission welcomes that membership of the Traveller community is included as a protected characteristic under the Bill and is given the same statutory footing as other ethnicities.⁴¹ However, the list of protected characteristics under the Bill does not fully align with the Equality Acts,⁴² excluding the grounds of civil status, family status and age. The Commission notes from the State report that the pre-legislative scrutiny session on the General Scheme of the Bill held in November 2021 is the only planned parliamentary engagement with stakeholders.⁴³ Given the significance of enacting this legislation for the rights of individuals and groups who may be the victim of incitement to hatred and hate crime, the Commission considers further parliamentary engagement with key affected groups on the development of this legislation is needed to ensure that the provisions of the Bill and its implementation are informed by their lived experiences.

The Commission recommends that:

- **the *Criminal Justice (Hate Crime) Bill* is developed in line with the State's obligations within a human rights framework, including through further parliamentary engagement with key affected groups, and is enacted without delay; and**

⁴⁰ [General Scheme of the Criminal Justice \(Hate Crime\) Bill](#).

⁴¹ Head 2 of the [General Scheme of the Criminal Justice \(Hate Crime\) Bill](#) provides that "'ethnicity" includes membership of the Traveller community'.

⁴² Equal Status Acts 2000-2018 and Employment Equality Acts 1998-2015.

⁴³ Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 para 4.

- the *Criminal Justice (Hate Crime) Bill* must be clear and robust in nature, and the thresholds for proving an offence is aggravated by prejudice must be both achievable and informed by a victim-centred approach.

Racist motivation as an aggravating circumstance

Legislating for hate crime is welcome as there are no specific hate crime offences in Irish law at present and there is no law that requires a sentencing court to recognise and account for the ‘hate’ element of a crime that was motivated by prejudice. In the absence of legislation, the hate element of a crime continues to risk being lost in practice across various stages of the criminal justice process, from the reporting and investigation of the crime, through to prosecution and sentencing.⁴⁴ While the Commission welcomes the creation of substantive offences aggravated by prejudice,⁴⁵ it is not clear why the State chose the specific offences in the absence of any rationale or data. The Commission notes that the Department of Justice’s planned public consultation on hate crime to inform the development of hate crime legislation did not happen.⁴⁶ The Commission considers that consultation with affected groups in the designation of existing offences as offences aggravated by prejudice is critical in ensuring that the legislation adequately and appropriately addresses the most prevalent offences aggravated by prejudice.

The Bill does provide that where an existing criminal offence is aggravated by prejudice, this will be considered by the court in determining the appropriate sentence.⁴⁷ However, the

⁴⁴ For a comprehensive account of this phenomenon, see A. Haynes and J. Schweppe (2017), [Lifecycle of a Hate Crime: Country Report for Ireland](#) (ICCL). See also, A. Haynes and J. Schweppe (2017), ‘The disappearing of hate crime in the Irish criminal justice process’, in A. Haynes, J. Schweppe, and S. Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan).

⁴⁵ The Criminal Justice (Hate Crime) Bill amends a number of sections under the Non-Fatal Offences Against the Person Act 1997, the Criminal Damage Act 1991 and the Criminal Justice (Public Order) Act 1994 to create new offences aggravated by prejudice. The substantive offences aggravated by prejudice are: assault; assault causing harm; assault causing serious harm; threats to kill or cause serious harm; coercion; harassment; endangerment; damaging property; threatening, abusive or insulting behaviour in a public place; distribution or display in a public place of material which is threatening, abusive, insulting or obscene; entering building, etc. with intent to commit an offence; and, assault with intent to cause bodily harm or commit an indictable offence.

⁴⁶ When announcing a call for submissions for the review of the *Prohibition of Incitement to Hatred Act 1989*, the Department of Justice stated that a public consultation will be held at a later date to inform the development of new hate crime legislation. See Department of Justice, [Review of the Prohibition of Incitement to Hatred Act 1989: Public Consultation](#) (October 2019).

⁴⁷ Head 7 of the [General Scheme of the Criminal Justice \(Hate Crime\) Bill](#).

Commission is concerned that unless there is a specific aggravated form of an existing offence, there may be a reluctance or lack of incentive on behalf of members of An Garda Síochána ('AGS') and prosecutors to gather or present evidence of prejudicial motivation for the offence and instead the focus will be on charging or prosecuting the basic offence.

The Commission welcomes that the Bill includes a list of indicators, based on the Office for Democratic Institutions and Human Rights' list of bias indicators, to help judges and juries in assessing whether a particular offence was motivated by prejudice.⁴⁸ However, the Commission is concerned that the indicators seem to address one-off incidents rather than circumstances where an offence or offences are repeated or take place over an extended period of time.⁴⁹ The Commission is concerned that the failure to adequately and effectively address the different manifestations of hate crime within the Bill may contribute to further marginalisation in society of groups affected by hate crime.

The Commission recommends that:

- **the list of offences to be aggravated by prejudice under the Criminal Justice (Hate Crime) Bill be informed by the lived experiences of those who have been a victim of hate crime.**
- **the Criminal Justice (Hate Crime) Bill effectively captures the different forms of harm faced by those with lived experiences of hate crime.**

Training for key actors

The Commission notes the emphasis placed by the Committee on appropriate training for the judiciary, prosecutors, and investigators in identifying, registering, investigating and prosecuting racist incidents and racist hate crimes.⁵⁰ Adequate and appropriate training on hate crimes for the judiciary, prosecutors, and police investigators is essential to the effective operation of the *Criminal Justice (Hate Crime) Bill*. Increased skills and knowledge on the proposed offences will improve the criminal justice response to these crimes. While

⁴⁸ Head 8 of the [General Scheme of the Criminal Justice \(Hate Crime\) Bill](#).

⁴⁹ This may be particularly the case for persons with disabilities who, due to a physical, mental, intellectual or sensory impairment, may have limited or no awareness that they are a victim of a crime.

⁵⁰ See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#) (December 2019) para 22(e).

noting from the State report the developments in the provision of training and education programmes to actors in the criminal justice system,⁵¹ the Commission calls for awareness and understanding of hate crimes to be further embedded into the initial and ongoing training provided to those in the criminal justice sector.

Prosecutors

The Commission has previously outlined that the review of hate crime legislation in Ireland must take into active consideration the criminal prosecution element.⁵² The Commission notes that the Guidelines for Prosecutors published by the Office of the Director of Public Prosecutions in 2019 did not offer prosecutorial guidance on prosecuting incitement to hatred offences.⁵³ Prosecutors will require training to better understand the importance of pursuing incitement to hatred and hate crime charges in cases where charges might be more easily brought under another piece of legislation, particularly as a substantive hate crime offence may pose challenges as it requires motive to be proved.⁵⁴ Prosecutors should know the importance of prosecuting offences aggravated by prejudice, even if the offence is minor, as any offence aggravated by prejudice can undermine social cohesion and society as a whole.⁵⁵

The Commission recommends that the Office of the Director of Public Prosecutions consider amending its Guidelines for Prosecutors to include guidance on prosecuting incitement to hatred and hate crime offences.

The Commission also recommends that training be provided to prosecutors to convey the importance of pursuing incitement to hatred and hate crime charges in cases where a particular action might be more easily charged under another Act.

⁵¹ Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 3-4.

⁵² IHREC [Review of the Prohibition of Incitement to Hatred Act 1989](#) (2019) 34.

⁵³ Office of the Director of Public Prosecutions, [Guidelines for Prosecutors](#), 4th Edition (October 2016).

⁵⁴ IHREC [Review of the Prohibition of Incitement to Hatred Act 1989](#) (2019) 35.

⁵⁵ United Nations Committee on the Elimination of Racial Discrimination, [General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system](#) (2005) para 15.

An Garda Síochána (police service)

The Commission notes from the State report the upgrades in the Garda PULSE system on the recording of hate crime and hate incidents, and the provision of hate crime training to those involved in the initial recording of calls and incidents.⁵⁶ While welcome developments, there is no update on the AGS's proposed action to replace the outdated PULSE records management system, despite outstanding concerns raised by the Commission on the Future of Policing in 2018.⁵⁷ This is particularly concerning given the documented increase in the reporting of racist crimes, including hate speech and graffiti, as well as offences against the person and criminal damage, to AGS in 2020.⁵⁸ This underlines the need for training on the indicators of hate crime for members of AGS to ensure they are equipped to identify, record and investigate all incidents of hate crime.

Following two consultations organised by the Commission in March 2021, young participants reported experiencing racial profiling by AGS and a question was posed as to whether police officers are adequately trained to deal with “inter-racial atmospheres in Ireland.”⁵⁹

While there has been a commitment to incorporating human rights within police training,⁶⁰ the lack of a structured and continual process of professional development has been noted.⁶¹

⁵⁶ Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 para 15.

⁵⁷ An Garda Síochána [Digital Strategy 2019 – 2023](#): p. 17: Priority Action 1.

⁵⁸ L. Michael, [Reports of racism in Ireland: Data from iReport.ie. - Annual Report 2020](#). Dublin: Irish Network Against Racism (2021).

⁵⁹ IHREC, Commission Conversation on Racism and Racial Discrimination with Community Advocates in the Greater Dublin Area, 23 March 2021.

⁶⁰ The *Diversity & Integration Strategy 2019–2021* committed to developing “a Garda training programme for Gardaí and Garda Staff to build their competency and capacity to interact more effectively and positively with migrants, refugees, victims of hate crime and people from diverse and minority background”. See An Garda Síochána, [Diversity & Integration Strategy 2019-2021](#) (2019) 9. An Garda Síochána's *Mission & Strategy Statement 2019 – 2021* and *Human Rights Strategy 2020–2022* also commit to incorporating human rights into training. See An Garda Síochána, [Strategy Statement 2019-2021](#) (2019) p. 8 and An Garda Síochána, [Human Rights Strategy 2020–2022](#) (2020) p. 10.

⁶¹ IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (August 2021) pp. 65–66; IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) 139.

The Commission recommends that members of An Garda Síochána should be equipped to understand, recognise, and thoroughly investigate all instances of incitement to hatred and hate crime through initial training at recruit stage and thereafter through dedicated ongoing training. Such training should be designed, implemented and monitored in collaboration with the communities most affected by hate crimes.⁶²

Judiciary

The Commission notes the view in the State report that as the judiciary do not have a role in identifying, registering, investigating and prosecuting racist incidents and racist hate crimes, the Committee's recommendation on training cannot be implemented.⁶³ While the judiciary may not have these functions, the Commission considers it important that continuous training be provided to the judiciary on the elements of hate crime under the proposed *Criminal Justice (Hate Crime) Bill* to ensure its successful implementation in practice.⁶⁴ However, the Commission notes with concern that despite the establishment of the Judicial Studies Committee in 2020,⁶⁵ there has been minimal progress in providing the judiciary with the requisite skills, knowledge, and training on hate crime.⁶⁶

The Commission recommends that the provision of training through the Judicial Studies Committee to support the continuing education of the judiciary on racist incidents and racist hate crimes.

⁶² IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (August 2021) 67–68.

⁶³ Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 para 13.

⁶⁴ The Commission has also called for legislation on judicial appointments to support the objective of the membership of the judiciary reflecting the diversity within Irish society. See IHREC, [Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission](#) (April 2021).

⁶⁵ Provided for under section 17 of the *Judicial Council Act 2019*. The Judicial Studies Committee shall 'facilitate the continuing education and training of judges with regard to their functions.'

⁶⁶ Recently published research has highlighted that Ireland lags behind international standards in the development of judicial education and training. See Laura Cahillane, Ronán Kennedy, Saoirse Enright and Doireann Ansbro, [Towards Best Practice: A report on the new Judicial Council in Ireland](#) (ICCL and Irish Research Council, 2022).

Legal aid

The Commission is concerned that the State has not implemented the Committee's recommendation to extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Travellers and other ethnic minority groups.⁶⁷

Under the *Civil Legal Aid Act 1995*, the Legal Aid Board is precluded from providing representation before quasi-judicial tribunals and bodies dealing with social welfare appeals, housing issues, and employment and equality cases, including the Workplace Relations Commission. The restrictive nature of the civil legal aid scheme has been strongly and repeatedly criticised by the Commission,⁶⁸ as the availability or absence of legal assistance and representation can determine whether or not a person can access court and tribunal proceedings or participate in them in a meaningful way.⁶⁹ In practice, many respondents in employment and equality cases are represented by legal counsel before the Workplace Relations Commission, which gives rise to an inequality of arms.⁷⁰

The Commission welcomes the recommendation by the *Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* for further resourcing and staffing of the Legal Aid Board to enable it to support future applicants for international protection, covering early legal advice at the reception stage until a final decision has been taken, including the judicial review stage.⁷¹ The Commission regrets, however, the failure by Government to prioritise this recommendation in the recent *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*, published in March 2021. The Government's target date of implementation

⁶⁷ Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth periodic reports of Ireland](#) (December 2019) para 44.

⁶⁸ For example, IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021) 62.

⁶⁹ Human Rights Committee, [General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial](#) (2007) UN Doc. CCPR/C/GC/32, para 10.

⁷⁰ FLAC, [Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland](#) (2021) 4; and Community Law and Mediation, [A submission by Community Law & Mediation to the Citizens' Assembly on Gender Equality](#) (2020) 2.

⁷¹ Government of Ireland, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020) 11.

of Quarter 2 2023⁷² is significantly later than the Quarter 2 2022 target recommended by the Advisory Group.⁷³ The Commission is further concerned that without formal extension of the Legal Aid Board's remit to quasi-judicial tribunals, barriers to justice will continue to exist for international protection applicants in a myriad of areas, particularly in the area of housing.⁷⁴

The Commission notes the State's commitment in the *Justice Plan 2021* to review the civil legal aid scheme and bring forward proposals for reform.⁷⁵ However, the details and scope of this review have yet to be publicly released.⁷⁶ The Commission has previously highlighted that the minimum financial contribution for legal representation represents an additional barrier to access and should be reviewed, particularly in light of the Legal Aid Board's Public Sector Equality and Human Rights Duty obligations.⁷⁷ Furthermore, the Legal Aid Board must be adequately resourced to ensure that waiting times are reduced.⁷⁸

The Commission recommends that the State extend the scope of the civil legal aid scheme, including by designating the Workplace Relations Commission and the Social Welfare Appeals Office as prescribed tribunals under Section 27(2)(b) of the *Civil Legal Aid Act 1995*.

The Commission recommends that the planned review of the civil legal aid scheme is underpinned by international human rights and equality standards; has the scope to

⁷² According to the White Paper, the Legal Aid Board will bring forward proposals to the Department of Justice by 2022 on what would be required to deliver the level of supports recommended, with a target date of implementation Q2 2023. See Government of Ireland, [A White Paper to End Direct Provision and to Establish a New International Protection Support Service](#) (2021) 51.

⁷³ Government of Ireland, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020) 11.

⁷⁴ The Advisory Group recommended the transition to own-door, community living after an initial period of three months. See Government of Ireland, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020) 8.

⁷⁵ Department of Justice, [Justice Plan 2021](#), Action 89: 23.

⁷⁶ The Commission notes that the State report does not include any details on the scope or the timing of the review. Committee on the Elimination of Racial Discrimination, [Information received from Ireland on follow-up to the concluding observations on its combined fifth to ninth periodic reports](#) (2022) UN Doc. CERD/C/IRL/FCO/5-9 para 21. Recent commentary by the Department of Justice does indicate that the Review Group will commence its work early in 2022: Department of Justice, [Legal Aid](#) (15 February 2022).

⁷⁷ See IHREC, [Submission to the Citizens' Assembly on Gender Equality](#) (2020) 30.

⁷⁸ See IHREC [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019) 13, 143; and IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports](#) (2017) 39.

address all of the barriers to accessing legal aid in a timely manner; is structured with clear timeframes for reform and dedicated resources; and ensures the participation of rights holders, civil society organisations and other key stakeholders.⁷⁹

⁷⁹ IHREC, [Submission on the Review of the Equality Acts](#) (2021) 11.



**Coimisiún na hÉireann um Chearta
an Dulne agus Comhlonannas**
Irish Human Rights and Equality Commission

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